IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH

S.B. Civil Writ Petition No.4257/01
Panna Lal Vs. Vimal Kumar & Ors.

15.03.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri V.K. Jain for petitioner.
Shri Pancham Surana for private-respondents.

REPORTABLE

This writ petition has been filed challenging the judgment dated 1.8.01 passed by the Board of Revenue by which the judgment dated 25.9.99 passed by the Assistant Collector, Dudu was reversed.

Factual matrix of the case is that respondent No.1 Vimal Kumar filed a suit under Section 88 and 188 of the Rajasthan Tenancy Act, 1955 (for short `the Act') for declaration and permanent injunction

against the defendant petitioner Panna Lal and the respondent no.2 and 3 who are respectively his mother and sister as co-defendants. A declaration was sought that the land of khasra no.80 measuring 8 bighas and 11 biswas and khasra no.81 measuring 3 bighas and 16 biswas and khasra no.82 measuring 5 bigha 17 biswas situated at Village Ponwa Kala be declared in the khatedari of the plaintiff and the defendant respondent no.2 and 3 and permanent injunction in regard thereto be issued against the petitioner. Notice of the said suit was issued on 6.5.99 and since it was not served again on 10.5.99 returnable by 14.5.99. According to the petitioner, notice was never served, upon him and yet the Assistant Collector presumed the

service of the notice upon him and directed the matter to proceed ex-parte against him and finally the ex-parte judgment and decree was passed on 24.5.99. When the petitioner came to know about the ex-parte decree on 18.6.99, he immediately filed an application under Order 9 Rule 13 CPC on 23.6.99 for setting aside the ex-parte decree inter alia contending therein that the process server never offered the summons to the petitioner and there was no proper service of notice. The petitioner was residing on the address given in the petition at Kishangarh since a long time and this fact was very much known to the plaintiff, yet he mentioned the address of the petitioner at his ancestral village Marva. The decree was procured

because the plaintiff and the other two defendants were in collusion and there was no service of notice on the petitioner.

The learned Assistant Collector after hearing the arguments of the parties finally allowed the application under Order 9 Rule 13 CPC by his order dated 25.9.99 and restored the civil suit to its original number. The respondent no.1 Shri Vimal Kumar then filed the revision petition under Section 230 of the Rajasthan Tenancy Act before the Board of Revenue which was partly allowed by the Board of Revenue vide order dated 1.8.2001 and the order dated 25.9.99 passed by the Assistant Collector, Dudu was set aside and the case was remanded back with the direction that the Board of

Revenue should take evidence of the persons who have filed the affidavits and allow the opportunity for their cross examination and then decide the matter afresh on merits. It is against this judgment that the present writ petition is filed.

I have heard Shri Vimal Kumar Jain, the learned counsel for the petitioner and Shri Pancham Surana, the learned counsel for the private respondents.

Shri Vimal Kumar Jain, the learned counsel for the petitioner argued that the learned Board of Revenue committed an error of law in reversing the order passed by the Assistant Collector dated 25.9.1999 whereby the ex-pate decree was set aside and the matter was restored for hearing afresh. The process server gave a

wrong report that the petitioner was not available in the house and he was out of station. In the report, the process server has submitted that when he went to the residence of the petitioner, he was not available there and was stated to be out of station. He offered the notice but when it was refused, he affixed the same on the house. Learned counsel for the petitioner argued that in the report process server did not mention the name of the person who was available at home to whom he offered the notice, whether he or she or whether major or minor. The learned Appellate Authority was therefore right in holding that the service of notices were not affected in accordance with the provisions of Order 5 Rule 15 and Order 5 Rule 17 of the CPC. The Board

of Revenue was therefore wholly justified in setting aside the order passed by learned Assistant Collector and remanding the matter for examination of the witness whose affidavits were filed in support of the application under Order 9 Rule 13 CPC and subjecting them to cross examination. He therefore prayed that the writ petition be allowed.

On the other hand, Shri Pancham Surana, the learned counsel for the respondents argued that the Board of Revenue has passed a just and correct order in as much as no interference therewith is required to be made by this Court. He argued that when the notice was sent to the petitioner at his residence, his wife was found there and she refused to accept the notice and therefore the

service had got to be affected by pasting such notice outside his house. The learned Assistant Collector therefore rightly passed the ex-parte decree. In any case, although, it has been directed by the learned Board of Revenue now is to revive the application of the petitioner for setting aside the ex-parte decree and the Assistant Collector has been asked to summon the witnesses whose affidavits were filed before him and subject them to cross examination and thus decide the matter afresh on merits. The Board of Revenue has held that when affidavit of the landlord of the defendants and certificate of the Ward Panch of the Village of which the petitioner is resident were there, the Assistant Collector prior to arriving at any

conclusion should have held an inquiry and ought not to have directly recorded the finding that service was not affected in accordance with law. He submits that no interference with that order was called for by this Court in exercise of its supervisory power under Article 226 & 227 of the Constitution of India because the order passed by the Board of Revenue does not suffer from any infirmity as may be called as error apparent on the face of the record.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record. I find that the report of the process server which is available on record as Annexure-1 merely indicates that when he went to

the residence of the petitioner, the petitioner was not available there and was said to be away somewhere and the one who was found at his residence refused to accept the notice. There is no report of the process server that whether she was his wife or some other relation of the petitioner or even whether, male or female. The learned Assistant Collector in his order dated 25.9.99 has therefore given a wrong reasoning when he stated that the process server did not indicate as to which of the petitioner's relation, when offered, refused to accept the notice. From what has been stated in the report of process server, it could not be accepted that it was wife of the petitioner who refused to accept the notice. The learned Board of Revenue was

therefore not right in directing that further detailed inquiry ought to have been held by the Assistant Collector. Such a direction could not be given just because the petitioner had additionally filed the affidavit of his landlord at Kishangarh and affidavit of the Ward Panchas etc.

All that had happened by acceptance of the application under Order 9 Rule 13 was revival of the revenue suit at the same stage which was obtaining prior to passing of ex-parte decree. When adjudication of certain disputes like the present matter is required to be made it is always in the interest of justice to give opportunity of adducing evidence to the affected parties and deciding the case on merits. In the present case the

Assistant Collector found that the service of the petitioner was wrongly deemed to have been completed contrary to the provisions of Order 5 Rule 15 read with Order 5 Rule 17 of CPC which was based entirely on the report made by the process sever owning to which reason ex-parte decree was passed against the petitioner. No more inquiry was thereafter required to be made particularly when perusal of the report of the process server does indicate that it was not only cryptic but vague as to whom did he offer this notice, who refused to accept the same. The affidavits and other documents filed by the petitioner or for that matter by the respondents in support of or against the application under Order 9 Rule 13 CPC did

not necessarily require the Assistant Collector to hold a full fledged or detailed inquiry because the sole basis on which the revenue suit was ordered to be proceeded ex parte against the petitioner was the report of the process server. If on examination of the same, he came to hold that the inference of services could not be drawn and service on the basis of such report could not be treated as deemed complete, the Board of Revenue, in my considered view, has erred in law in directing a detailed inquiry on the application under Order 9 Rule 13 filed by the petitioner.

In view of what has been discussed above, the present writ petition deserves to be allowed and is accordingly allowed. The order passed by the Board of Revenue

is set aside. Either of the parties shall be at liberty to move the Assistant Collector, Dudu for revival of the revenue suit afresh.

The writ petition is accordingly allowed with no order as to costs.

(Mohammad Rafiq),J.

Rs/-